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March 23, 2004

Mark Kyle, Undersecretary of State
State of California
Elections Division
1500 11th Street, 5th Floor
Sacramento, CA 95814

Dear Mr. Kyle:

The County of San Diego is in the process of completing its canvass of the March 2, 2004 Primary Election. The canvass, by State law, is due to be completed on March 30.

Approximately 22,000 provisional ballots were cast electronically in the county. About 17,000 of these ballots have already been processed - either accepted and entered into the count because it was determined that the voter was eligible and cast the correct ballot, or rejected because the voter was not eligible to vote at all.

There are approximately 5,000 additional provisional ballots that fall under provisions of the newly enacted AB190 legislation, which allows any voter to go to any precinct in their county and vote a provisional ballot. When that provisional ballot is processed at the elections office, elections officials must count only the votes for the candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct. (Elections Code Section 14310 (c)(4).) This legislation went into affect January 1, 2004.

Problem:

We are not able to process the 5,000 AB190 provisional ballots. The provisional security feature specifically programmed into GEMS 1.18.18 prevents us from associating the provisional ID number with the voter's ballot, thus there is no way for us to print these provisional ballots so that they can be "remade" to the correct ballot.

The security feature in GEMS was designed prior to the passage of AB190 to ensure that the ballot could be located in the system for processing (i.e., acceptance or rejection) but not viewed. With the passage of AB190, it now becomes necessary to view the ballot in some cases where the voter cast the ballot out of his/her correct ballot style. The ballot must then be compared to the ballot style of the correct precinct, and only votes cast for candidates and measures in the correct precinct can be accepted into the count.

March 23, 2004
Mark Kyle, Undersecretary of State
Page 2

Solution:

We have been advised that Diebold has written an AB190 print utility and placed this utility within GEMS development software version 1.18.20.3. This allows the functionality to print these AB190 provisional ballots. In order to ensure that each of these 5,000 votes is counted, we propose to:

- Make a backup copy of the election database.
- Print out the provisional ballots for the AB190 voters using this copy of the database with the utility in GEMS 1.18.20.3.
- Duplicate the AB190 ballots onto the correct ballot and tally these ballots into the actual election database residing on GEMS 1.18.18.
- Delete the copy of the database and remove GEMS 1.18.20.3 from the server computer. The actual election database will not be affected nor will it be run with the new version of GEMS.
- The printed copy of the provisional ballot will be destroyed to protect ballot secrecy.

Alternatives:

Our only alternative is to not count these ballots.

Impact:

This will allow approximately 5,000 AB190 provisional ballots to be counted and for the county's canvass to be completed.

I appreciate your help on this matter. If there is any additional information we can provide, please do not hesitate to contact me.

Sally McPherson

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